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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 United States of America,
13 Plaintiff,
14 vs.

15 Jose Balmore Romero, et al,
16 (Moises Villalobos # 2)
17 (Joffri Molina # 14)
18 Defendants.

Case No. 2:17-cr-00278-ODW

NOTICE OF MOTION AND MOTION
TO DISMISS THE INDICTMENT
AND/OR FOR RELEASE FROM
CUSTODY FOR VIOLATIONS OF
THE SPEEDY TRIAL ACT, THE
SIXTH AMENDMENT RIGHT TO A
SPEEDY TRIAL, AND THE FIFTH
AMENDMENT RIGHT TO DUE
PROCESS; MEMORANDUM OF
POINTS AND AUTHORITIES

Trial Date: May 10, 2022
Hearing Date: January 10, 2021
Hearing Time: 10:00 a.m.
Ctrm: 5D

23
24 Defendants, Moises Villalobos, through his counsel Richard Raynor, and Joffri
25 Molina, through his counsel Carlos Iriarte, hereby move to dismiss the Indictment
26 against them and/or for release from custody based upon violations of the Speedy Trial
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1 Act, violation of their Sixth Amendment rights to a Speedy Trial, and violation of the
2 right to Due Process.

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4 Dated: December 3, 2021

Respectfully Submitted,

/s/ Richard W. Raynor
5 RICHARD W. RAYNOR
6 Attorney for Defendant
7 MOISES VILLALOBOS
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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION:

Moises Villalobos is charged in the Indictment in Count 1 with RICO conspiracy, in Count 7 with VICAR attempted murder, Count 16 with drug conspiracy, and Count 35 with Use of a Firearm in connection with a crime of violence (referencing Counts 1 and 7). Joffri Molina is charged in Count 1 with RICO conspiracy, in Count 14 with VICAR murder, and Count 38 with Use of a Firearm in connection with a crime of violence.

Mr. Villalobos and Mr. Molina first appeared on the Indictment on May 17, 2017, and trial is now set for May 10, 2022, almost five years from their first appearance. Mr. Villalobos expressed his objection to all but the first continuance of the trial date. Mr. Molina expressed to his objection to all but the first two continuances of the trial date.

Mr. Villalobos and Mr. Molina file this motion which is similar to the motion to dismiss on speedy trial grounds filed by Mr. Villalobos one year ago. Docket 1062. However, Mr. Villalobos and Mr. Molina now have an even stronger claim that their statutory and constitutional rights have been violated by the excessive delay of their trial. The new circumstances, since the last motion, include:

- 1) another year has passed, bringing the total time in pre-trial custody to approximately five years;

1 2) involuntarily placement of Mr. Villalobos in a medical facility for nine
2 months under conditions that caused Mr. Villalobos' health to decline,
3 which conditions included the following:

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5 a) guards were stationed in his room 24 hours a day, seven days
6 a week such that his sleep was disturbed,

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8 b) not provided adequate space to move his wheelchair in his room,
9 nor enough time to move about other areas of the facility to
10 adequately exercise,

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12 c) chaining his arm or wheelchair while in his room, at first both
13 day and night hours, later changed to daytime hours only;

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15 3) Jury trials have resumed in the Central District of California prior to the
16 granting of the last continuance;

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18 4) The Ninth Circuit, in reviewing the statutory and constitutional limitations
19 of a twenty-one month detention, in which much of the delay was caused
20 by COVID concerns, upheld the findings of excludable delay but
21 cautioned that the length of the detention "is approaching the limits of
22 what due process can tolerate." *United States v. Torres*, 995 F.3d 695,
23 709 (9th Cir. 2021).

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25
26 The current state of the facts and the law are such that the delay of the trial of
27 defendants Villalobos and Molina for nearly five years has exceeded the allowable
28 limits. As a result, Mr. Villalobos and Mr. Molina request that the Court either dismiss

1 the indictment and/or release defendants Villalobos and Molina until the conclusion of
2 the trial.

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4 Summary of Argument

5 Mr. Villalobos and Mr. Molina contend that more than 70 days of the time that
6 has passed since their arrest and initial appearance is not excludable, and therefore the
7 Speedy Trial Act clock has run, requiring dismissal, pursuant to 18 U.S.C. § 3161(c)
8 and 18 U.S.C. § 3162(a)(2). Even though two of the five defendants in the subject trial
9 grouping stipulated to continue the trial to May 10, 2022, that extension of the trial
10 date resulted in an unreasonable delay of the trial of their co-defendants, Mr.
11 Villalobos and Mr. Molina.

12 Mr. Villalobos and Mr. Molina also contend that more than 90 days of the time
13 that passed since their arrest and initial appearance is not excludable, and because they
14 have remained in custody since that their initial detention solely because they are
15 awaiting trial, and the Speedy Trial Act clock has run, they must be released from
16 custody, pursuant to 18 U.S.C. § 3164.

17 Because of the blanket and open ended suspension of jury trials and the five year
18 delay in trial, Mr. Villalobos and Mr. Molina were deprived of the right to a speedy
19 trial under the Sixth Amendment.

20 Finally, because of the length of the delay (five years) and other circumstances in
21 this case, the pretrial detention of Mr. Villalobos and Mr. Molina violates Due Process
22 and requires their release.

1 Procedural History

2 At the beginning of 2020, Mr. Villalobos filed a motion to dismiss for violation
3 of his Speedy Trial rights. Docket No. 887. The Court denied the motion. However,
4 the Court committed to pushing this matter forward toward trial without further delay.
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6 The minute order states:
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8 “The Court also heard from counsel, the concerns re the trial date and the
9 several continuances previously granted. To avoid further continuances, any
10 new requests for substitution of counsel are STRONGLY discouraged. The trial
11 date of June 23, 2020 is firm.”

12 Docket No. 908.

13 Since the court ruled on Mr. Villalobos’ last Speedy Trial Motion, the world has
14 been hit with the COVID-19 pandemic, and jury trials were suspended in this district.

15 The COVID-19 pandemic and the resulting General Orders are the apparent
16 reasons why this Court did not press the parties to move forward with trial on June 23,
17 2020 as a firm trial date as it had indicated in January 2020. Instead this Court made
18 findings of excludable delay until March 21, 2021.
19

20 Then, by General Order of the Chief Judge of this District, it was ordered that
21 normal court operations were to resume on June 15, 2021. GENERAL ORDER NO.
22 21-08.
23

24 The total time from Mr. Villalobos’ initial appearance on May 17, 2017 to the
25 date set for trial, May 10, 2022, is almost five years (1819 days). The total time from
26 the initial appearance to the filing of this Speedy Trial Act motion is three and a half
27 years (1661 days).
28

Timeline

5/17/2017	Mr. Villalobos is arrested and appears on Indictment (70 day speedy trial act clock starts – 18 U.S.C. § 3161(c)(1))
6/21/2017 - 7/6/2017	Excluded time while bond review motion filed, Doc. 326, until ruling denying motion, Doc. 354. 18 U.S.C. § 3161(h)(1)(d). <u>15 days excluded.</u>
7/22/2017 - 5/22/2018 (continuance 1)	Doc. 327 - stipulation for 10 month continuance. Doc. 329 -Court finds excludable delay for <u>315 day</u> period (<u>49 days</u> have run as of the start of this exclusion period)
3/16/2018 - 3/28/2018	Excluded time while bond review motion filed, Doc. 532, until ruling denying motion, Doc. 539. 18 U.S.C. § 3161(h)(1)(d). <u>12 days excluded.</u>
5/22/2018 - 3/26/2019 (continuance 2)	Doc. 494 - stipulation for 10 month continuance – Villalobos objects. Doc. 496 -Court finds excludable delay for <u>308 day</u> period
6/28/2018 – 7/10/2018	Excluded time while bond review motion filed, Doc. 604, until ruling denying motion, Doc. 615. 18 U.S.C. § 3161(h)(1)(d). <u>12 days</u> excluded.
3/26/2019 - 9/24/2019 (continuance 3)	Doc. 716 - stipulation for 6 month continuance – Villalobos objects. Doc. 718 - Court finds excludable delay for <u>182 day</u> period
3/29/2019 - 5/20/19	Excluded time from time of filing of motions, Doc. 742-747, until ruling on motions, Doc. 795. 18 U.S.C. § 3161(h)(1)(d). <u>52 days excluded.</u>

<p>1 9/24/2019- 6/23/2020 2 (continuance 4)</p>	<p>Doc. 822 - stipulation for 10 month continuance – Villalobos objects. Doc. 824 - Court finds excludable delay for <u>273 day</u> period.</p>
<p>4 8/21/2019 – 9/16/2019</p>	<p>Excluded time from the filing of a motion to sever, Doc. 844, to the denial of the motion to sever, Doc. 860. <u>26 days excluded.</u></p>
<p>8 6/23/2020 – 3/16/2021 9 (continuance 5)</p>	<p>Doc. 933 – stipulation for 9 month continuance – 3 of the 5 defendants in trial grouping 2 (Mr. Villalobos, and co- defendants Joffri Molina, and Jordin Duarte) objected to the continuance. Doc. 935 – Court finds excludable delay for <u>266 day</u> period.</p>
<p>12 3/16/2021 – 11/2/2021 13 (continuance 6)</p>	<p>Doc. 1093 – stipulation for 7 and a half month continuance – 3 of the 5 defendants in trial grouping 2 (Mr. Villalobos, and co-defendants Joffri Molina, and Jordin Duarte) objected to the continuance.</p>
<p>15 4/19/2021</p>	<p>Phased reopening of the Central District of California Courts announced with jury trials to recommence in the Western Division on June 7, 2021.</p>
<p>18 6/11/2021</p>	<p>Central District of California General Order 21-08 signed by chief judge, with the approval of the Court’s executive committee, ordering that “[a]ll of the divisions of the Central District of California will resume normal operations on June 15, 2021.”</p>
<p>22 11/2/2021 – 5/10/2022 23 (continuance 7)</p>	<p>Doc. 1199 – stipulation for 6 month continuance – 3 of the 5 defendants in trial grouping 2 (Mr. Villalobos, and co-defendants Joffri Molina, and Jordin Duarte) objected to the continuance.</p>

The Speedy Trial Act Clock as of the Initial Trial Date - Calculations

The Speedy Trial clock started upon the initial appearance of Mr. Villalobos on May 17, 2017. Trial was set on July 22, 2017. Sixty-four (64) days would have run

MOTION TO DISMISS THE INDICTMENT OR OTHER RELIEF RELATED TO A FIVE YEAR TRIAL DELAY 8

1 prior to the first trial date, but 15 days were excluded during the period while Mr.
2 Villalobos had a bond rehearing motion pending. Therefore, 49 days had run prior to
3 the trial date of July 22, 2017.
4

5 Recent Trial Continuances

6 Continuance 6.

7
8 Mr. Villalobos and Mr. Molina and one other co-defendant in his trial grouping
9 (group 2) objected to that proposed approximate nine month continuance. About half
10 of that continuance extended beyond the time when jury trials re-commenced in this
11 district. The two defense counsel in this group who requested a continuance requested
12 that time to prepare for trial. However, almost four years was plenty of time to prepare
13 for trial. Any preparation needed beyond that period should not delay trial for co-
14 defendants who have been ready for trial for years. Such delay to the trial of co-
15 defendants Villalobos and Molina was unreasonable and should therefore not be
16 excluded.
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20 Continuance 7.

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22 Mr. Villalobos and Mr. Molina, and one other defendant in his trial grouping
23 (group 2) objected to that proposed approximate seven month continuance. Two
24 defendants in this trial grouping requested additional time. Trials had already
25 commenced in the Western Division of the Central District of California during the
26 entire period of this continuance. This delay will bring the total time in pre-trial
27 custody to five years.
28

Summary of Defense Speedy Trial Act Clock Calculation

Forty-nine (49) days had elapsed as of the first continuance and finding of excludable delay. Therefore, if more than twenty-one (21) days of elapsed time is beyond what is a reasonable delay for the trial of Mr. Villalobos, then the Speedy Trial Act has been violated.

The Court has already found that the first five continuances did not result in a Speedy Trial Act violation.

However, the circumstances now present do not justify the length of excludable delay found by the Court. Given that jury trials have been feasible for some time, and have actually re-commenced in this district for some months, the granting of the continuances to give additional time for trial preparation is not a reasonable grounds for cause a five year delay of trial for co-defendants who want a speedy trial.

ARGUMENT:

I. THE GOVERNMENT BEARS THE BURDEN OF PROVING THAT LESS THAN SEVENTY (70) DAYS HAVE RUN ON THE SPEEDY TRIAL CLOCK

“Once the defendant establishes a prima facie case that the government violated the Act (a simple matter of producing a calendar and showing that more than seventy days have passed since the indictment (or first appearance) and trial has yet to begin), the government has the burden of proving excludable time by a preponderance of the evidence.” *United States v. Jenkins*, 92 F.3d 430 (6th Cir., 1996). As discussed below,

1 the government cannot do so here, so dismissal of the indictment against Mr.
2 Villalobos and Mr. Molina is required.

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4 **II. NO CONTINUANCE IS PERMITTED UNDER THE SPEEDY TRIAL ACT**
5 **UNDER THE “ENDS OF JUSTICE” EXCLUSION UNLESS JUSTIFIED BY**
6 **SPECIFIC FINDINGS BY THE COURT**

7 The seven Speedy Trial Act stipulations filed by the government in this case set
8 forth proposed reasons for “ends of justice” exclusions under the Speedy Trial Act. 18
9 U.S.C. § 3161. The Court incorporated by reference the reasons given in the
10 stipulations as the basis for its findings that each of the four requested trial
11 continuances were in the interests of justice. The Speedy Trial Act provides an
12 exclusion of time for a trial continuance “if the judge granted such continuance on the
13 basis of his findings that the ends of justice served by taking such action outweigh the
14 best interest of the public and the defendant in a speedy trial.” 18 U.S.C. §
15 3161(h)(7)(A). However, the Speedy Trial Act also provides that “[n]o such period of
16 delay resulting from a continuance granted by the court in accordance with this
17 paragraph shall be excludable under this subsection unless the court sets forth, in the
18 record of the case, either orally or in writing, its reasons for finding that the ends of
19 justice served by the granting of such continuance outweigh the best interests of the
20 public and the defendant in a speedy trial.” *Id.* Such an “ends of justice” exclusion
21 was “intended by Congress to be ‘rarely used,’ and that the provision is ‘not a general
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1 exclusion for every delay.” *United States v. Jordan*, 915 F.2d 563, 565 (9th Cir.1990)
2 (internal citations omitted).

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4 “[A] district court may grant an “ends of justice” continuance only if it satisfies
5 two requirements: (1) the continuance is specifically limited in time; and (2) it is
6 justified [on the record] with reference to the facts as of the time the delay is ordered.”
7
8 *United States v. Clymer*, 25 F.3d 824, 828 (9th Cir. 1994) at (internal quotations a
9 citations omitted). In *United States v. Clymer*, the Ninth Circuit said that the ““ends of
10 justice’ exclusion...is not to be routinely applied, and that it may not be invoked in
11 such a way as to circumvent the time limitations set forth in the Act.” *Id* at 829.

12
13 The sixth continuance states that it incorporates the stipulation into its findings,
14 mentioning COVID-19, the need for more time for defense preparation, and the
15 advantages of a joint trial by excluding time for those defendants not joining the
16 stipulation. However, the interests in a joint trial is only one factor, which factor must
17 give way if it were to result in an unreasonable delay of a co-defendant’s trial, as
18 claimed by Mr. Villalobos and Mr. Molina. *See United States v. Messer*, 197 F.3d
19 330 (9th Cir. 1999) (delay of trial unreasonable despite interest in joint trial with co-
20 defendant).

21
22 The last continuance, number seven, recites in the stipulation that the need for
23 the continuance of the trial includes the backlog of cases from the temporary
24 suspension of jury trials, and the need for more time for trial preparation. The parties
25 signing the stipulation agreed that the delay caused the objecting co-defendants was

1 reasonable. Mr. Villalobos and Mr. Molina disagree. Waiting five years for trial, in
2 custody, for co-defendants to prepare for trial, is unreasonable.

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4 III. ALTHOUGH SHORT BLANKET TRIAL CONTINUANCES MAY BE
5 ORDERED TO ACCOMMODATE THE IMMEDIATE AFTERMATH OF
6 AN EMERGENCY, THE SPEEDY TRIAL ACT DOES NOT ALLOW
7 FOR THE OPEN ENDED SUSPENSION OF A JURY TRIAL, DESPITE A
8 GENERAL ORDER THAT PURPORTED TO SUSPEND THE RIGHT TO A
9 JURY TRIAL FOR AN UNSPECIFIED PERIOD

10 The fifth and sixth continuances, citing grounds of delay caused by the COVID
11 pandemic, were excessive.

12 This district's general order purported to suspend the right to a speedy trial,
13 stating:

14 "Until further notice, no jury trials will be conducted in criminal cases."

15 General Order 20-09, C.D. Cal., August 6, 2020, ¶6.

16 The general order purported to prohibit the resumption of jury trials in this
17 district without any indication of when the trials would recommence. The issue
18 presented is whether a pandemic justifies this nine month continuance, and justifies a
19 general order that purports to suspend jury trials until some yet to be determined date.
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22 In *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981) the Ninth Circuit
23 addressed a continuance of a criminal trial for about two weeks based upon a finding
24 of excludable delay caused by the eruption of the Mt. St. Helens volcano which
25 interfered with court operations from this "incident/accident of worldwide significance
26 and paralyzing impact on surrounding geographies, including the location of the court
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1 where the appellant was scheduled for trial.” The Ninth Circuit pointed out that there
2 is no reference to delays caused by nature in the Speedy Trial Act. *Id.* In denying
3 relief to the defendant, the Ninth Circuit reasoned that limited time of the continuance
4 was short (about two weeks), was not open-ended, and that the defendant was out of
5 custody during that delay. *Id.*

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8 Here, the total time in which COVID is listed as one of the reasons for delay
9 exceeds one year. These factors all suggest that delay here was too much time for an
10 “interests of justice” exclusion.
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12 In *United States v. Correa*, 182 F. Supp. 2d 326 (S.D.N.Y. 2001), the district
13 court applied *Furlow* in the aftermath of the September 11 terrorist attack.
14 Immediately after the attack, the court and other essential government buildings were
15 closed to non-emergency personnel. *Id.* at 327. When the court reopened on
16 September 18, 2001, telephone service and internet access remained offline, law
17 enforcement agents assigned to the defendant’s case had been redeployed to
18 emergency service work, and security staffing concerns made it “virtually impossible,
19 and clearly imprudent, to transport prisoners to Court.” *Id.* Under these extraordinary
20 circumstances, the district court concluded that the ends of justice warranted a delay of
21 14 days. *Id.* at 329.
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26 Here, the continuances exceeded a year. State courts within the Central District
27 of California had earlier shown that jury trials could have been safely resumed, by
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1 taking appropriate precautions. Therefore, the continuance here extended beyond what
2 was required to accommodate concerns about the pandemic.

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4 Under the circumstances here, the delay is unreasonable. Mr. Villalobos is
5 wheelchair bound, and has a difficult time having his medical issues resolved while in
6 custody. Although Mr. Villalobos and Mr. Molina are presumed to be innocent, they
7 will have to wait close to five years or more to address the merits of the government's
8 case.
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11 Mr. Villalobos and Mr. Molina have demanded a speedy trial and objected to the
12 last four continuances. Mr. Villalobos has asked for a severance, which has been
13 denied. Docket No. 860. Mr. Villalobos has asked for release on bond, which has been
14 denied. Mr. Villalobos and Mr. Molina want to address the merits of the government's
15 accusations against them, but are unable to do so because the trial keeps getting
16 delayed.
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19 These latest continuances, when viewed in light of the prior continuances, and
20 the reasons given, is excessive, and not supported by sufficient findings of excludable
21 delay. As a result, there has been a violation of the Speedy Trial Act.
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23 IV. THE RULE THAT A FINDING OF EXCLUDABLE DELAY AS TO ONE
24 DEFENDANT APPLIES TO ALL CO-DEFENDANTS HAS AN
25 IMPORTANT LIMITATION: THERE MUST NOT BE AN
26 *UNREASONABLE* DELAY AS TO CO-DEFENDANTS SEEKING A
SPEEDY TRIAL

27 The Speedy Trial Act stipulations presented for this Court's signature in this
28 case have all referenced *United States v. Butz*, 982 F.2d 1378, 1381 (9th Cir. 1993) for
MOTION TO DISMISS THE INDICTMENT OR OTHER RELIEF RELATED TO A FIVE YEAR TRIAL DELAY 15

1 the proposition that “an exclusion to one defendant applies to all co-defendants.” “The
2 “attribution of delay to a codefendant, however, is limited by a reasonableness
3 requirement.” *United States v. Messer*, 197 F.3d 330, 336 (9th Cir. 1999). Even if a
4 finding of excludable delay is justified as some defendants, the resulting delay to co-
5 defendants, like Mr. Villalobos and Mr. Molina, must also be reasonable. *Id.* As to
6 the last two continuances, in the Group 2 trial of five defendants, two stipulated to a
7 continuance, and three (including Mr. Villalobos and Mr. Molina) objected to the
8 continuance.
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12 The generic reasons for delay for the last six continuances simply do not supply
13 sufficient justification for delay of the trials. Meanwhile, Mr. Villalobos and Mr.
14 Molina, who are in custody, will not have an opportunity to address the merits of the
15 case against them at trial for more close to five years, or possibly more.
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19 V. THE COURT MUST DISMISS THE INDICTMENT BASED UPON
20 VIOLATION OF THE SPEEDY TRIAL ACT; ANY DISMISSAL OTHER
21 THAN WITH PREJUDICE WOULD OFFEND THE PURPOSES OF THE
22 SPEEDY TRIAL ACT UNDER THE FACTS AND CIRCUMSTANCES OF
THIS CASE

23 The Speedy Trial Act provides that failure to bring the defendant to trial within
24 the proscribed time period requires that the “indictment shall be dismissed on motion
25 of the defendant.” 18 U.S.C. § 3162(a)(2).
26

27 “In determining whether to dismiss the case with or without prejudice, the court
28 shall consider, among others, each of the following factors: the seriousness of the

1 offense; the facts and circumstances of the case which led to the dismissal; and the
 2 impact of a reprosecution on the administration of this chapter and on the
 3 administration of justice.” *Id.*

5 Here, it appears that the government has not sought to prepare the government’s
 6 case for trial in a timely manner. The government gains a tactical advantage as in-
 7 custody defendants become impatient because of the delays in trial, and may then seek
 8 to cooperate against Mr. Villalobos and Mr. Molina and others. Furthermore, the
 9 government has delayed in producing all discovery, despite this Court’s direction on
 10 September 16, 2019 to government counsel to provide any outstanding discovery to the
 11 defense as “expeditiously as possible”. Yet the government continued to roll out
 12 discovery at a snail’s pace. *See* Motion to Compel, Document 1172. Therefore, the
 13 delays here have created a risk of prejudice to Mr. Villalobos and Mr. Molina.

17 VI. RELEASE OF MR. VILLALOBOS AND MR. MOLINA IS REQUIRED IF
 18 THE COURT FINDS THAT HE HAS BEEN HELD FOR 90 DAYS FOR
 19 WHICH THERE IS NO EXCLUDABLE DELAY
 20

21 If the Court finds that the government has failed to establish excludable delay
 22 for 90 days during the period from his first appearance on May 17, 2017 until May 10,
 23 2022, then this Court is required to release Mr. Villalobos and Mr. Molina. 18 U.S.C.
 24 § 3164(c); *United States v. Tirasso*, 532 F.2d 1298 (9th Cir. 1976)(Agreeing with
 25 defense contention that “the statute unconditionally mandates release from custody in
 26 all cases where the defendants have not been brought to trial within ninety days of
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1 arrest.”) The needs of the co-defendants for more time for preparation is simply not a
2 reasonable justification to delay the trial of Mr. Villalobos and Mr. Molina for years
3 beyond the dates when their respective counsel have indicated readiness for trial.
4 Therefore, if the Court does not dismiss the charges, the Court must release Mr.
5 Villalobos and Mr. Molina pending trial.
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8 VII. THE SUSPENSION OF ALL JURY TRIALS AND THE RESULTING
9 DELAYS IN THE TRIAL HERE DENY MR. VILLALOBOS AND MR.
10 MOLINA OF THEIR SIXTH AMENDMENT RIGHT TO A SPEEDY
11 TRIAL

12 The indictment should also be dismissed for the independent violation of the
13 constitutional right to a speedy trial. This determination requires consideration of the
14 factors set forth in *Barker v. Wingo*—“[l]ength of delay, the reason for the delay, the
15 defendant’s assertion of his right, and prejudice to the defendant”—each of which
16 warrant dismissal. *Barker*, 407 U.S. at 530.

17
18 First, a delay of over three and half years is “presumptively prejudicial.” *Id.* at
19 530-31; see *Doggett v. United States*, 505 U.S. 647, 652 n.1 (1992) (“[T]he lower
20 courts have generally found post accusation delay ‘presumptively prejudicial’ at least
21 as it approaches one year”). Second, as to continuances five and six, the delay is due
22 to the Court and government’s refusal to implement protocols for jury trials. This fact
23 should be considered because the ultimately responsibility for such circumstances must
24 rest with the government rather than the defendant. Third, Mr. Villalobos has objected
25 to all but the first continuance of his trial date, and Mr. Molina to all but the first and
26

1 second continuance. Finally, Mr. Villalobos has suffered immensely in pre-trial
2 incarceration during a pandemic, as someone with a disability (paralysis of his legs and
3 uses catheter to urinate), and has been shuffled around from MDC, to West Valley
4 Detention Center, and most recently to a local hospital for nine months, where he was
5 chained up, his sleep was disturbed by the presence of four officers in his holding area
6 24 hours a day, seven days a week. Currently, Mr. Villalobos was returned to MDC,
7 where he is not receiving the supplies necessary to safely catheterize without the risk
8 of a urinary tract infections.
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12 In *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981), the Ninth Circuit also
13 discussed a claim that the Sixth Amendment was violated by the two week delay that
14 followed the Mt. St. Helens volcano eruption. In evaluating the claim of a violation,
15 the Court evaluated 1) the cause of the delay, 2) the length of the delay, 3) the
16 judgment of the trial court as expressed in its order, 4) the defendant's assertion of his
17 rights, and 5) the prejudice that resulted. *Id* at 769. The Court found that "[t]he
18 relatively brief delays do not rise to the level of presumptive prejudice."
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22 After this court indicated a firm trial date, stipulations were filed relying in part
23 on the pandemic for further delays. Part of this delay is due to the failure of the
24 District Court for the Central District of California to accommodate jury trials.
25 Further aggravating the uncertainty that Mr. Villalobos and Mr. Molina faced was a
26 general order that cancelled all criminal jury trials until further notice. If local state
27 courts were unable to safely conduct jury trials, the case for significant delay might be
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1 more compelling. If grand juries were not continuing to indict more defendants, the
2 justification for the delay might be more compelling. But state court trials were going
3 on, and federal grand juries are handing down indictments...in this district...in this
4 division.
5

6 Then, even when trials resumed, an additional continuance was granted,
7 bringing pretrial incarceration to approximately five years. This case is clearly in the
8 territory of a presumption of prejudice.
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10 On those facts, the continuances to May 10, 2022 violate the Sixth Amendment
11 right to a speedy trial of Mr. Villalobos and Mr. Molina.
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15 VIII. DESPITE SOME ALLOWANCE FOR ADDITIONAL TIME FOR COVID
16 PANDEMIC DELAYS, THE FIVE YEARS OF PRETRIAL DETENTION
17 ENDURED BY MR. VILLALOBOS AND MR. MOLINA IN THIS CASE TO
18 DATE HAS BECOME PUNATIVE IN NATURE SUCH THAT DUE
19 PROCESS HAS BEEN VIOLATED, AND RELEASE OR DISMISSAL IS
20 REQUIRED

21 In denying a facial due process challenge to the constitutionality of the
22 provisions Bail Reform Act of 1984 allowing for pre-trial detention, the Supreme
23 Court relied in part on the time limits of the Speedy Trial Act, reasoning that “the
24 maximum length of pretrial detention is limited by the stringent time limitations of the
25 Speedy Trial Act.” *United States v. Salerno*, 481 U.S. 739, 747 (1987). In a footnote,
26 the Court stated “We intimate no view as to the point at which detention in a particular
27 case might become excessively prolonged, and therefore punitive, in relation to
28

1 Congress' regulatory goal." *Id.* at 769, n. 4. *See also, United States v. Gelfuso*, 838
2 F.2d 358, 359–60 (9th Cir. 1988) (Adopting a case-by-case analysis and declining to
3 express a "view as to the point at which detention in a particular case might become
4 excessively prolonged and violate due process.")
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6 The Ninth Circuit recently decided a case analyzing various challenges to the
7 length of pre-trial detention where the delay was caused, at least in part, by COVID
8 pandemic concerns. *United States v. Torres*, 995 F.3d 695 (9th Cir. 2021). In *Torres*,
9 the Ninth Circuit reasoned that "[o]n balance, we conclude that Torres's twenty-one-
10 month detention does not yet violate due process, but we caution that the length of
11 Torres's detention is approaching the limits of what due process can tolerate."
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13

14 The Court concluded:
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16 "Because of the troubling length of Torres's pretrial detention, due process
17 demands that the district court begin Torres's trial or reconsider bail subject to
18 appropriate conditions very soon."
19 *Id.* at 710.

20 Here, the sixty months pre-trial detention of Mr. Villalobos is punitive. He has
21 no prior felony convictions. He is being detained in difficult circumstances. He has
22 indicated readiness for trial years ago. As to Mr. Molina, the government's claim of
23 his dangerousness primarily due to his alleged role as a shooter in a September 27,
24 2015 homicide, despite overwhelming evidence that the government's theory is
25 unreliable. Mr. Molina and his counsel want to proceed to trial. Therefore, the due
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1 process rights of Mr. Molina have likewise been violated by the proposed five year
2 pre-trial detention.

3
4 CONCLUSION:

5 Based upon the foregoing, defendants, Moises Villalobos and Joffri Molina,
6 respectfully requests that this Court dismiss the indictment with prejudice for violation
7 of the Speedy Trial Act and the Sixth Amendment right to a speedy trial, and/or order
8 their release forthwith on those grounds or on the grounds of violation of due process.
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11 Dated: December 3, 2021

Respectfully Submitted,

12 /s/ Richard W. Raynor
13 RICHARD W. RAYNOR
14 Attorney for Defendant
15 MOISES VILLALOBOS
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